

1 relates solely to state of mind, and not the truth of the  
2 statements made.

3 JUDGE CHACHKIN: All right. I'll overrule the  
4 objection on that basis. Any further objections?

5 MR. SHOOK: Your Honor, the Bureau would also object  
6 to the very last sentence of that paragraph with the  
7 understanding that Your Honor had previously ruled to the  
8 contrary, with respect to a similar objection to paragraph  
9 14's language relative to Reverend Espinoza's help so that the  
10 Bureau is simply noting its objection for the record.

11 JUDGE CHACHKIN: All right. Let's proceed. Further  
12 objections?

13 MR. SHOOK: Yes, Your Honor, with respect to  
14 paragraph 25. The sentence that begins on the bottom line of  
15 page 16, through the rest of the paragraph, the Bureau objects  
16 on relevance grounds.

17 MR. COHEN: May I have one moment to read it, Your  
18 Honor?

19 JUDGE CHACHKIN: I'll overrule the objection, let's  
20 proceed.

21 MR. SHOOK: I believe now we're up to paragraph 26,  
22 which is where Mr. Cohen wanted to get.

23 JUDGE CHACHKIN: All right. Mr. Cohen, what are  
24 your objections to 26?

25 MR. COHEN: Yes, sir, thank you, Your Honor. I

1 think 26, Your Honor, is -- it's conclusory and it's  
2 irrelevant, at least I'm talking about now the first, I'll  
3 take this a sentence at a time, the first.

4 JUDGE CHACHKIN: Well, are you objecting to the  
5 entire paragraph?

6 MR. COHEN: No, I'm going to start --

7 JUDGE CHACHKIN: What is your objection?

8 MR. COHEN: Well, if I could just get -- could I  
9 have a second --

10 JUDGE CHACHKIN: Yes. I don't see any relevancy in  
11 the entire paragraph?

12 MR. COHEN: I don't either --

13 MR. TOPEL: Your Honor, I'll withdraw the paragraph.

14 JUDGE CHACHKIN: All right. Paragraph 26 is  
15 withdrawn. Next objection?

16 MR. COHEN: I have no objection to paragraph 27,  
17 maybe the Bureau does?

18 MR. SHOOK: Yes, Your Honor, we do.

19 JUDGE CHACHKIN: What's your objection?

20 MR. SHOOK: Beginning in the second sentence, the  
21 Bureau would object as conclusory the phraseology used in the  
22 sense that he states "I've fulfilled my duties as a Director  
23 by --" the Bureau has no problem if that sentence were  
24 reformed to read "I attended meetings, etc., when I could and  
25 communicated by telephone."

1 MR. TOPEL: Your Honor, I would propose a different  
2 reformation to Mr. Shook, which is "I believe I've fulfilled  
3 my duties."

4 MR. SHOOK: The Bureau would have, consistent with  
5 the Bureau not objecting to the first sentence of paragraph  
6 27. The Bureau would have no problem with that reformation.

7 JUDGE CHACHKIN: All right. The second sentence  
8 reads, "I believe I fulfilled my duties," etc. Any further  
9 objection?

10 MR. SHOOK: In the middle of paragraph 27 appearing  
11 on page 18, the sentence that reads "Those duties were  
12 performed or supervised by Mrs. Duff, whom I knew and  
13 trusted." I have a -- the Bureau has a competence objection  
14 to that sentence.

15 JUDGE CHACHKIN: Well, he could testify and he could  
16 demonstrate the basis of his knowledge, if he doesn't have any  
17 knowledge, it can be stricken.

18 MR. SHOOK: Thank you, Your Honor.

19 JUDGE CHACHKIN: Overruled.

20 MR. SHOOK: I have no further objection to the  
21 remainder of paragraph 27.

22 JUDGE CHACHKIN: All right.

23 MR. COHEN: 28, Your Honor.

24 JUDGE CHACHKIN: Yes.

25 MR. COHEN: I object to the first sentence on the

1 grounds of this conclusory and competence. The first sentence  
2 is a conclusion which I think relates to the control issue,  
3 and you're going to have to decide that. The second sentence  
4 is clearly he's incompetent to testify as to what Dr. Crouch  
5 knew.

6 MR. TOPEL: Your Honor, again, I would propose a  
7 reformation to leave in the testimony or reform it to say "I  
8 was not a rubber stamp for anyone." And leave the language  
9 about the front and the second sentence out.

10 MR. COHEN: Well, the rubber stamp --

11 MR. TOPEL: That is Pastor Espinoza's very strong  
12 state of mind, that is not border that I wish to leave in.

13 JUDGE CHACHKIN: Well, we'll change it to this, "I  
14 believe I was not a rubber stamp for anyone."

15 MR. TOPEL: Thank you, I accept that, Your Honor.

16 MR. COHEN: And are you going to -- will you strike  
17 the sentence Dr. Crouch knew?

18 JUDGE CHACHKIN: Yes.

19 MR. TOPEL: Your Honor, then I would ask that we  
20 reform the third sentence where it says "He and I had a few  
21 disagreements."

22 JUDGE CHACHKIN: Should be Dr. Crouch.

23 MR. TOPEL: To "Dr. Crouch and I."

24 JUDGE CHACHKIN: All right. Any further objections?

25 MR. COHEN: No, I have no further objections.

1 JUDGE CHACHKIN: So the first sentence, paragraph 28  
2 reads, "I believe that I was not a rubber stamp for anyone."  
3 The second sentence is stricken, the third sentence begins  
4 with "Dr. Crouch and I." Any further objections?

5 MR. SHOOK: Yes, Your Honor.

6 JUDGE CHACHKIN: Yes?

7 MR. SHOOK: This would be -- this would be to  
8 clarify something, I guess it doesn't necessarily have to be  
9 an objection but the phraseology that appears in the third  
10 line up, from the last paragraph, that appears on page 19,  
11 "But Mrs. Duff was not a yes person, and wasn't hesitant about  
12 disagreement with Dr. Crouch." The portion that Mrs. Duff was  
13 not a yes person, I have no problem with that as limited to  
14 Reverend Espinoza's state of mind.

15 JUDGE CHACHKIN: I'll overrule the objection. He  
16 was there and he has knowledge of it, or he doesn't. You can  
17 question him on the basis of his knowledge. Any objection to  
18 the tabs Tab A or B?

19 MR. COHEN: I have none, Your Honor.

20 MR. SHOOK: No objections, Your Honor.

21 JUDGE CHACHKIN: All right. TBF Exhibit 106, and  
22 Tab A and B are received, except as modified by my rulings.

23 (Whereupon, the document referred to  
24 as TBF Exhibit No. 106 was received  
25 into evidence.)

1 JUDGE CHACHKIN: Next is --

2 MR. TOPEL: Yes, Your Honor.

3 JUDGE CHACHKIN: -- 107.

4 MR. TOPEL: Yes, I now have Volume II-D, which  
5 contains TBF Exhibit 107. And I ask to have marked for  
6 identification a document which begins with an explanatory  
7 note, and then I refer to the page after that, states  
8 "Testimony of Phillip Russell Aguilar," and proceeds through  
9 226 pages, followed by a single Tab A, and as we've noted  
10 during an earlier pre-hearing conference, this document is the  
11 entire text with attachments of Pastor Espinoza's --

12 MR. COHEN: Aguilar.

13 MR. TOPEL: Thank you, Mr. Cohen, Pastor Aguilar's  
14 deposition, and I ask that it be marked for identification as  
15 TBF Exhibit 107.

16 JUDGE CHACHKIN: The documents described are marked  
17 for identification as TBF Exhibit 107 and Tab A to 107.

18 (Whereupon, the document referred to  
19 as TBF Exhibit No. 107 was marked for  
20 identification.)

21 MR. TOPEL: Yes. And Your Honor, I move that  
22 Exhibit into evidence.

23 JUDGE CHACHKIN: Any objections? Hearing none, --

24 MR. COHEN: Your Honor, I just wanted to make a  
25 statement to your benefit, sir.

1 JUDGE CHACHKIN: All right.

2 MR. COHEN: That certainly in terms of knowing the  
3 players, Pastor Espinoza was the first Director, and then  
4 Pastor Aguilar succeeded him.

5 MR. TOPEL: That's not entirely accurate because  
6 there were three initial directors.

7 MR. COHEN: Well --

8 MR. TOPEL: And Pastor Aguilar was the fourth  
9 Director.

10 MR. COHEN: Well, I meant -- Mr. Topel has  
11 accurately portrayed it, what I wanted you to know was where  
12 it fit into the scene, Aguilar, and you now know, thanks to --

13 MR. TOPEL: He became a Director in August, 1990.

14 JUDGE CHACHKIN: Well, did he replace --

15 MR. TOPEL: He replaced Pastor Espinoza.

16 MR. COHEN: He succeeded Pastor Espinoza.

17 MR. TOPEL: Succeeded.

18 JUDGE CHACHKIN: Whatever. He took his place.

19 MR. COHEN: He took his place.

20 JUDGE CHACHKIN: All right.

21 MR. SHOOK: Your Honor, the Bureau has no objection.

22 JUDGE CHACHKIN: All right. Then apparently the  
23 parties are satisfied with this deposition testimony and he's  
24 not coming to cross examination.

25 MR. TOPEL: That's correct, Your Honor.

1 JUDGE CHACHKIN: All right. TBF Exhibit 107 and Tab  
2 A are received.

3 (Whereupon, the document referred to  
4 as TBF Exhibit No. 107 was received  
5 into evidence.)

6 MR. TOPEL: Your Honor, I now have Volume II-E,  
7 which contained TBF Exhibit 108 through 115. I ask to have  
8 marked for identification a document titled "Testimony of  
9 Norman G. Juggert" consists of six pages, followed by a  
10 sponsoring declaration, followed by three tabs lettered A, B  
11 and C. And I ask that that be marked for identification as  
12 TBF Exhibit 108.

13 JUDGE CHACHKIN: The documents described are marked  
14 for identification as TBF Exhibits 108 and Tabs A, B and C.

15 (Whereupon, the document referred to  
16 as TBF Exhibit No. 108 was marked for  
17 identification.)

18 MR. TOPEL: Thank you, Your Honor, I ask to have  
19 marked for identification a document titled "Testimony of  
20 James G. McClellan," the document consists of 32 pages of  
21 testimony followed by a supporting declaration, followed by  
22 Tabs lettered A through J. I ask that that be marked for  
23 identification as TBF Exhibit 109.

24 JUDGE CHACHKIN: The documents described, they're  
25 marked for identification as Tab -- as TBF Exhibit 109, plus



1 Tabs A through J.

2 (Whereupon, the document referred to  
3 as TBF Exhibit No. 109 was marked for  
4 identification.)

5 MR. TOPEL: Thank you, Your Honor. I ask to have  
6 marked for identification a document titled "Testimony of  
7 Christopher F. Warner, Senior," consists of four pages, and  
8 the sponsoring declaration is, the execution is on the bottom  
9 of the fourth page, it consists of four pages, and I ask that  
10 that be marked for identification as TBF Exhibit 110.

11 JUDGE CHACHKIN: The document described is marked  
12 for identification as TBF Exhibit 110.

13 (Whereupon, the document referred to  
14 as TBF Exhibit No. 110 was marked for  
15 identification.)

16 MR. TOPEL: Your Honor, I ask to have marked for  
17 identification a document that consists of three pages, with  
18 the witnesses certification at the bottom of the first page.  
19 It is titled "Testimony of Shenobu (phonetic) Saquori  
20 (phonetic) Christman (phonetic)," and I ask that that be  
21 marked for identification as TBF Exhibit 111.

22 JUDGE CHACHKIN: The document is so marked.

23 (Whereupon, the document referred to  
24 as TBF Exhibit No. 111 was marked for  
25 identification.)

1 MR. TOPEL: Next, Your Honor, I ask to have marked  
2 for identification as TBF Exhibit 112, a document titled  
3 "Testimony of Brian K. Mitchell," it consists of two pages of  
4 testimony with the certification at the bottom of the second  
5 page.

6 JUDGE CHACHKIN: The document is so marked.  
7 (Whereupon, the document referred to  
8 as TBF Exhibit No. 112 was marked for  
9 identification.)

10 MR. TOPEL: Your Honor, I ask to have marked for  
11 identification as TBF Exhibit 113, a document titled  
12 "Testimony of Timothy Greenage (phonetic)," consists of three  
13 pages with the cert -- witness's certification at the bottom  
14 of page 3.

15 JUDGE CHACHKIN: The document is so marked.  
16 (Whereupon, the document referred to  
17 as TBF Exhibit No. 113 was marked for  
18 identification.)

19 MR. TOPEL: Thank you, Your Honor, I ask to have  
20 marked for identification as TBF Exhibit 114, a document  
21 titled "Testimony of En," that's E-N, "Young," Y-O-U-N-G,  
22 "Park," consists of three pages with the witness's sponsoring  
23 declaration at the bottom of the third page.

24 JUDGE CHACHKIN: The document is so marked.  
25 (Whereupon, the document referred to

1 as TBF Exhibit No. 114 was marked for  
2 identification.)

3 MR. TOPEL: Lastly, Your Honor, I ask to have marked  
4 for identification as TBF Exhibit 115, a document titled  
5 "Testimony of Mona McDonald," consists of three pages, with  
6 the witness's signature at the bottom of the third page.

7 JUDGE CHACHKIN: The document is so marked.

8 (Whereupon, the document referred to  
9 as TBF Exhibit No. 115 was marked for  
10 identification.)

11 MR. TOPEL: Your Honor, at this juncture, so I don't  
12 forget, we did exchange a document TBF Exhibit 116, which was  
13 testimony of Scott Morris, David Scott Morris, which has been  
14 superseded by Joint Exhibit 1. So we will not be asking you  
15 to identify or making any offer of TBF Exhibit 116, which we  
16 exchange, we'll be withdrawing everything we've done with  
17 that.

18 JUDGE CHACHKIN: All right.

19 MR. TOPEL: Thank you, Your Honor, I offer TBF  
20 Exhibit 108 into evidence.

21 JUDGE CHACHKIN: Any objections?

22 MR. COHEN: Very few, Your Honor --

23 JUDGE CHACHKIN: All right.

24 MR. COHEN: -- you'll be pleased to know. Turning  
25 to paragraph 4, my concern is in the middle of the paragraph,

1 with the sentence, "My belief was reinforced when I read an  
2 article in the Los Angeles Times," that article is in  
3 evidence, Your Honor, you'll recall, it was admitted  
4 yesterday. I don't object to his, to Mr. Juggert's reference  
5 to this, but I wanted to be clear that you're admitting this  
6 not to the truth of the proposition asserted, but this was for  
7 -- this reflects his state of mind.

8 MR. TOPEL: Yeah, that has been a common --

9 JUDGE CHACHKIN: Yes, it's going to be received for  
10 that limited purpose.

11 MR. COHEN: I have no other objection on paragraph  
12 4, because I think he's entitled to state what his opinion is.  
13 Obviously whether his opinion, and the opinion, your opinion  
14 is the same, is something that will be determined. But he's  
15 entitled to state his opinion.

16 JUDGE CHACHKIN: I'm sure he'll be questioned about  
17 his opinion before this hearing's over.

18 MR. COHEN: I think it probably might happen. I  
19 have nothing until we get to paragraph 8, Your Honor, I cannot  
20 speak for the Bureau.

21 JUDGE CHACHKIN: Bureau have anything prior to 8?

22 MR. SHOOK: Your Honor, can we have a moment,  
23 please?

24 JUDGE CHACHKIN: Yes.

25 MR. SHOOK: No, sir, we can continue with Mr. Cohen.

1 JUDGE CHACHKIN: All right.

2 MR. COHEN: In paragraph 8, Your Honor, the last --  
3 I object to the clause at the end of the paragraph 8, that "At  
4 no time did I intentionally misstate facts or create omissions  
5 for the purpose of concealing something from the FCC." That's  
6 a matter which --

7 JUDGE CHACHKIN: Well --

8 MR. COHEN: -- is in issue here and --

9 JUDGE CHACHKIN: I'll receive it as to state of  
10 mind. I agree with you that the issue will be determined on  
11 the basis of the facts and all the circumstances, and the fact  
12 that he makes a self-serving statement that he didn't  
13 intentionally misstate facts, there's no -- it does not  
14 provide truth for whether he did or did not.

15 MR. COHEN: Thank you, that's all I wanted to hear  
16 you say.

17 JUDGE CHACHKIN: It's repeatedly said all through  
18 the testimony, but again, it will depend on the facts and the  
19 circumstances, and whether in fact under the Commission Law it  
20 constituted intentional misstatements or not. Not on the  
21 basis of his statement that he didn't intentionally do so.

22 MR. TOPEL: We understand he will be examined and  
23 tested, Your Honor.

24 MR. COHEN: I think paragraph 9 --

25 JUDGE CHACHKIN: One thing is his definition of

1 intentional may be different than the Commission's which the  
2 person does something knowingly that constitutes intentional.  
3 He may have a different meaning of intentional, or in  
4 accordance with fraud the statutes, I don't know.

5 MR. TOPEL: We understand he'll be examined and  
6 tested, Your Honor.

7 JUDGE CHACHKIN: All right.

8 MR. COHEN: I object to all of paragraph 9 on the  
9 grounds that it is conclusory and irrelevant.

10 JUDGE CHACHKIN: Paragraph 9 will be stricken as  
11 irrelevant.

12 MR. TOPEL: Your Honor, I would like my position on  
13 the record --

14 JUDGE CHACHKIN: All right.

15 MR. TOPEL: -- on that, since Mr. Juggert is a  
16 Director of TBN, and the issue alleges whether TBN abused the  
17 Commission's processes by intentionally filing applications,  
18 through an NMTV I believe Mr. Juggert's state of mind, that  
19 there is a separation between the companies and why there's a  
20 separation that's relevant to the intent component of the use  
21 of process issued.

22 MR. COHEN: Do you want to hear argument on that?

23 JUDGE CHACHKIN: Yes.

24 MR. COHEN: Well, first of all, --

25 JUDGE CHACHKIN: Is this being offered solely to his

1 state of mind?

2 MR. TOPEL: Yes, Your Honor.

3 MR. COHEN: Well, if I can just have a minute then.

4 JUDGE CHACHKIN: Yes.

5 MR. COHEN: I want to reflect on what Mr. Topel just  
6 said, the reason -- excuse me. I think that the paragraph has  
7 a vice which is that he purports to speak on behalf of the  
8 NMTV Board, and he's not competent to do that, he's not even  
9 competent to speak on behalf of the TBN Board. And the  
10 paragraph has that vice. Where he says "I also believe that  
11 while the members of the TBN Board, and the members of the  
12 NMTV Board have a share a common, the minority members come at  
13 their faith from a different --" he has no competence to do  
14 that, to make that statement, and I object to the --

15 JUDGE CHACHKIN: If you could separate out of here  
16 his state of mind, from the many hearsay statements he's  
17 making, unsupported statements about what other Board members,  
18 Directors believe or don't believe, perhaps we could salvage a  
19 portion of this for state of mind, but this goes beyond state  
20 of mind, he's talking about the state of mind of other --

21 MR. COHEN: Exactly, Your Honor.

22 JUDGE CHACHKIN: -- Directors.

23 MR. TOPEL: It's offered solely for his belief of  
24 the first sentence that Mr. Cohen raises, the preface to it is  
25 "I know from having heard them express such thoughts," and so

1 he can be examined on what he's heard. But again, it's only  
2 from his state of mind as to what he heard, not to the truth  
3 of the thoughts. Similarly, his belief which is based on his  
4 knowledge and interaction with these people. It's entirely  
5 offered for his state of mind, and not for the truth of the  
6 proposition.

7 MR. COHEN: Your Honor, if Mr. Topel had Mr. Juggert  
8 on the witness stand, I would submit to you over objection,  
9 you wouldn't permit him to testify as he has. And that is  
10 ultimately the test.

11 JUDGE CHACHKIN: All right.

12 MR. COHEN: Because it's vague to begin with, he  
13 doesn't even identify the minority directors, he doesn't  
14 identify what meetings occurred, those would all be, so this  
15 questioning that will elicit these answers, there'd be  
16 objections, and I believe you would sustain them.

17 MR. TOPEL: I think Mr. Cohen is wrong, Your Honor,  
18 I think if Mr. Juggert were asked, if he testified, I believe  
19 it's a different entity, and I asked him why do you believe  
20 that, you would allow that question. Because his state of  
21 mind is relevant to intent in this case. And he would answer  
22 the question. This is his answer to the question.

23 JUDGE CHACHKIN: All right. I will allow in for  
24 state of mind the first sentence. All I will allow in is the  
25 first sentence for state of mind. The remainder of the



1 paragraph which deals with his belief as to other individuals  
2 on the Board, will not be received. There's been no  
3 foundation laid for his stating such a belief. So just the  
4 first sentence is being received.

5 MR. TOPEL: Your Honor, would you consider also the  
6 last sentence, which states his understanding and belief that  
7 NMTV is really something different from TBN, I understand  
8 you've stricken the predicate of the reasons why you believe  
9 that, and I'm not going to re-argue that with you, but would  
10 you leave in the clause, "I have always understood and  
11 believed NMTV," as to the witness's state of mind?

12 JUDGE CHACHKIN: I'll leave that in also, the state  
13 of mind evidence. "I have always understood and believed that  
14 NMTV really was something different than TBN." So the only  
15 thing I'm allowing in is the first sentence and part of the  
16 last sentence of paragraph 9. The rest is rejected. Any  
17 further objections?

18 MR. COHEN: No, sir.

19 JUDGE CHACHKIN: TBF Exhibit 108 is received. And  
20 any objections to the tabs?

21 MR. COHEN: No, sir.

22 JUDGE CHACHKIN: Do you have any objection to the  
23 Tabs?

24 MR. SCHONMAN: No, sir.

25 JUDGE CHACHKIN: All right. Tab A through Tab J is

1 also received.

2 MR. SCHONMAN: Your Honor --

3 JUDGE CHACHKIN: Yes.

4 MR. SCHONMAN: Tabs A, B and C relate to Exhibit  
5 108. A, B, and C, Your Honor.

6 JUDGE CHACHKIN: No, wait a minute, I'm looking at  
7 the wrong one, I'm sorry. Tab A, B and C are received, yes.

8 (Whereupon, the document referred to  
9 as TBF Exhibit No. 108 was received  
10 into evidence.)

11 JUDGE CHACHKIN: I'm getting ahead of myself. All  
12 right. The next is TBF Exhibit 109, the testimony of James G.  
13 McClellan, that's M-c-C-L-E-L-L-A-N.

14 MR. TOPEL: Yes, we offer that into evidence, Your  
15 Honor.

16 JUDGE CHACHKIN: Any objection?

17 MR. COHEN: Yes, sir. Your Honor, I will begin. I  
18 tried in reviewing to only raise the objections that I thought  
19 would come within the kin of your earlier ruling. And in that  
20 connection, I object -- I have no objection to paragraph 1,  
21 but in paragraph 2, I have an objection to everything after  
22 the first line. It's clear to me that this is the type of  
23 material that you have deemed irrelevant, this explanation  
24 about he grew up in a troubled home, and his mother was  
25 married twice, and he was the victim of physical and sexual

1 | abuse. And then on to the third grade, etc., etc. That  
2 | paragraph is clearly irrelevant in terms of your earlier  
3 | ruling.

4 | JUDGE CHACHKIN: I'm going to strike all of  
5 | paragraph 2, with the exception of the first sentence on the  
6 | grounds of relevance.

7 | MR. COHEN: And I make the same objection to  
8 | paragraph 3, Your Honor. I think it's very praiseworthy that  
9 | Mr. McClellan -- Pastor McClellan did the things he did in  
10 | terms of volunteering to work at missions and churches in  
11 | South Central L.A., but there is no relevance to the issues in  
12 | this proceeding.

13 | JUDGE CHACHKIN: Except with the last sentence which  
14 | states his being ordained for the ministry.

15 | MR. COHEN: Yes, I have no objection to that, your  
16 | point is well taken, Your Honor.

17 | JUDGE CHACHKIN: All right. All of paragraph 3 with  
18 | the exception of the last sentence is stricken, it's not  
19 | relevant.

20 | MR. COHEN: I don't object to paragraph 4 because it  
21 | deals with his broadcast experience, Your Honor.

22 | JUDGE CHACHKIN: All right.

23 | MR. COHEN: That would be within the -- of your  
24 | ruling. Similarly paragraph 5 is appropriate because it talks  
25 | about his relationship with TBN.

1 JUDGE CHACHKIN: Any further objections?

2 MR. SCHONMAN: Yes.

3 JUDGE CHACHKIN: What --

4 UNIDENTIFIED SPEAKER: Maybe the Bureau has an  
5 objection.

6 JUDGE CHACHKIN: What objection.

7 MR. SCHONMAN: Your Honor, you received paragraph 4,  
8 because it talks about his broadcast experience. On page 3,  
9 he -- that's okay. I withdraw the objection. That's fine.

10 JUDGE CHACHKIN: What's your next objection?

11 MR. COHEN: My next objection is in paragraph 6  
12 where he talks at the end of the paragraph "I received nine  
13 religion and media, those awards." I think that's -- I  
14 withdraw that. Excuse me, can I consult?

15 JUDGE CHACHKIN: Sure.

16 MR. COHEN: Yeah, I object on the grounds that it's  
17 not relevant, the awards he's received.

18 MR. TOPEL: Your Honor, that one, I'd -- I mean I'd  
19 like to be heard on all of them, but you've ruled on most of  
20 these on other days, and so my arguments will be --

21 JUDGE CHACHKIN: Yes.

22 MR. TOPEL: -- in the record. The issue of Mr.  
23 McClellan's being hired as Station Manager by National  
24 Minority Television was discussed both in his testimony and  
25 Mrs. Duff's testimony.

1           Mrs. Duff testified that she made that decision  
2 because he had experience in producing local programming,  
3 again showing a focus on local programming at the early  
4 stages, which Your Honor ruled as relevant in light of what  
5 the designation order had said.

6           And also because he had a background in relationship  
7 in his local programming with minorities which the earlier  
8 background testimony we offered to show where he developed  
9 that rapport. And I understand Your Honor has stricken that  
10 background.

11           And -- but his success as a local programmer, and  
12 the acknowledgement of his success as a local programmer going  
13 to the issue of the bonafities of NMTVs plans to provide  
14 local programming, and this as the reason to that, Mrs. Duff  
15 hired him to be the station manager, I would submit is  
16 relevant.

17           MR. SCHONMAN: Your Honor, can the Bureau be heard  
18 on this?

19           JUDGE CHACHKIN: Yes.

20           MR. SCHONMAN: The Bureau objects to this last  
21 sentence of paragraph 6 for the reasons that Mr. Cohen has  
22 expressed. And in response to Mr. Topel, I want to state that  
23 there is no explanation on what basis these awards are given  
24 out. We don't know if this individual received these awards  
25 because he was the only one who entered the contest, or

1 whether there was a contest, or whether it was for merit,  
2 there's just no basis. There's no foundation for why these  
3 were awarded.

4 JUDGE CHACHKIN: Well, let me ask you this. Are you  
5 saying that he received these awards prior to being hired on  
6 NMTV?

7 MR. TOPEL: Yes, sir. I believe so.

8 JUDGE CHACHKIN: Well, he received these awards  
9 prior to NMTV, if that's the case. And Mrs. Duff's testimony  
10 indicates that she was aware of this was one of her reasons  
11 for hiring him, then I could see how it's relevant.

12 MR. TOPEL: I cannot represent to you that Mrs. Duff  
13 testified that she relied on these awards.

14 JUDGE CHACHKIN: If she didn't, then I don't see how  
15 it's relevant.

16 MR. COHEN: I don't think there's any mention of  
17 that, and I stand corrected from my friend, Mr. Topel, but I  
18 don't think there's any mention in Mrs. Duff's testimony.

19 JUDGE CHACHKIN: If it isn't, then I don't see how  
20 it's relevant, it didn't play a role in her hiring for the  
21 position. So I will strike the last sentence as not being  
22 relevant.

23 MR. TOPEL: The last sentence of paragraph 6 is what

24 --

25 JUDGE CHACHKIN: Yes.

1 MR. TOPEL: Okay.

2 JUDGE CHACHKIN: If it was tied in to Mrs. Duff it  
3 would be relevant, but if it isn't, then I don't see how it's  
4 relevant.

5 MR. COHEN: Turning to paragraph 7, Your Honor, this  
6 is by the first sentence makes it clear, this all has to do  
7 with personal matters, and I suggest to you, sir, that it's  
8 not relevant to the designated issues.

9 MR. TOPEL: On this one, Your Honor, I can represent  
10 to you that both Mrs. Duff and Pastor Espinoza testified that  
11 they were aware that Mr. McClellan had pastored churches, and  
12 had administrative and supervisory experience from those  
13 experiences which led to their decision to hire him as the  
14 station manager in Portland.

15 JUDGE CHACHKIN: The question is to what extent were  
16 they aware.

17 MR. COHEN: And it's not tied up here, Your Honor.  
18 I suggest -- I respectfully suggest this is not tied up at all  
19 with what Mr. Topel has indicated to you. This is the kind of  
20 material that you would see in a comparative case, where this  
21 witness was proposing to be --

22 JUDGE CHACHKIN: In any event, to the extent to  
23 which they were aware is set forth, I presume, in their  
24 testimony, his stating his involvement is irrelevant. On  
25 relevance could be if they were aware and that played a role

1 in their hiring. If it didn't, then it's irrelevant, so I will  
2 strike all of -- is it all of paragraph 7?

3 MR. COHEN: Yes.

4 JUDGE CHACHKIN: All of paragraph 7 will be stricken  
5 as irrelevant.

6 MR. TOPEL: Your Honor, may I just have one second  
7 to review the paragraph?

8 JUDGE CHACHKIN: Yes.

9 MR. TOPEL: It's a long paragraph. Okay, Your  
10 Honor, we can proceed.

11 JUDGE CHACHKIN: All right.

12 MR. COHEN: And consistent with your ruling, Your  
13 Honor, I have no -- your earlier rulings, anything that  
14 relates to his job in Portland is fair game, so I have no --

15 JUDGE CHACHKIN: All right.

16 MR. COHEN: -- objections to 8, or 9 or 10.

17 MR. SCHONMAN: The Bureau has an objection with part  
18 of 9.

19 JUDGE CHACHKIN: Yes, what's the Bureau's objection?

20 MR. SCHONMAN: On page 7, just about -- a little  
21 above the middle of the page, the sentence, "Dr. Crouch was  
22 the President, and Mrs. Duff told me that she was an officer."  
23 And then the clause about which the Bureau has a problem is  
24 the clause "A Vice President, I think."

25 JUDGE CHACHKIN: Pardon me?



1 MR. SCHONMAN: The phrase "A Vice President, I  
2 think."

3 JUDGE CHACHKIN: Well, that's the best of his  
4 recollection, you could question him about that.

5 MR. SCHONMAN: Very well.

6 JUDGE CHACHKIN: This is what she told him, if he  
7 doesn't recall it, you could bring it out. I'll overrule the  
8 objection.

9 MR. COHEN: And my next objection, Your Honor, is  
10 not until the end of paragraph 14.

11 JUDGE CHACHKIN: Do you have any further objections?

12 MR. SCHONMAN: No, sir.

13 MR. COHEN: Where he states, "And my conversation is  
14 with Trinity, and Trinity Station Manager, the January  
15 affiliates, confirm that this is still the case." It's  
16 clearly coming in for the truth of the --

17 MR. TOPEL: I will agree to that being stricken, if  
18 Mr. Cohen will identify the language.

19 MR. COHEN: Yes, it's the last clause. "And my --"  
20 beginning "And my," the fourth line from the bottom.

21 JUDGE CHACHKIN: In other words, the sentence reads,  
22 "TBN's manager report to Terry Hicky when I moved to  
23 Portland."

24 MR. COHEN: Yes, and end it there.

25 JUDGE CHACHKIN: The remainder of the sentence will